

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

STATE OF WEST VIRGINIA,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, et al.,

Respondents.

No. 23-1418

**JOINT MOTION TO EXTEND BRIEFING SCHEDULE  
ON RESPONDENTS' VENUE MOTION AND TO STAY  
DEADLINE TO FILE ADMINISTRATIVE RECORD**

Pursuant to Federal Rules of Appellate Procedure 17, 26(b), and 27, the Parties jointly move for an extension of time for Petitioner's response to, and for Respondents' reply in support of, Respondents' the United States Environmental Protection Agency and its Administrator, Michael S. Regan (collectively "EPA"), Motion to Transfer the Petitions for Review to the D.C. Circuit or Dismiss Based on Improper Venue ("Venue Motion"), ECF No. 10. The Parties also jointly move for a stay of the deadline for EPA to file its certified index until 30 days after the Court decides EPA's Venue Motion. In support of this motion, the Parties state as follows:

1. On February 13, 2023, EPA promulgated a final rule disapproving 21 states' plans, including West Virginia's, regarding how states would address their emissions impacts to downwind states' ozone levels. Air Plan Disapprovals;

Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards, 88 Fed. Reg. 9336, 9338 (Feb. 13, 2023) (“Final Rule”).

2. On April 14, 2023, Petitioner State of West Virginia (“West Virginia”) petitioned for review of the Final Rule. ECF No. 3-1.

3. On April 27, 2023, EPA filed its Venue Motion. ECF No. 10.

4. Under Federal Rule of Appellate Procedure 27(a)(3)(A), (a)(4), West Virginia’s response to the Venue Motion is due by May 8, 2023, and EPA’s reply is due by May 15, 2023.

5. By this motion, West Virginia and EPA each request an extension beyond what is provided in Federal Rule of Appellate Procedure 27 to respectively file their response to and reply in support of EPA’s Venue Motion. West Virginia requests an 8-day extension, making its response to EPA’s Venue Motion due May 16, 2023, and EPA requests a 4-day extension, making its reply in support of its Venue Motion due May 30, 2023, the next business day.

6. The Parties also jointly move for a stay of the filing of the certified index. Under Federal Rule of Appellate Procedure 17, EPA must file a certified index within 40 days after being served with West Virginia’s petition for review, which would be May 24, 2023. The Parties respectfully request the Court stay the deadline for filing the certified index until 30 days after an order on the pending Venue Motion.

For these reasons, the Parties respectfully request that this Court grant this joint motion to extend the briefing schedule for EPA's Venue Motion and stay the deadline for EPA to file the certified index.

Respectfully submitted,

OF COUNSEL:

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DATE: April 28, 2023

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/s/ Alexandra L. St. Romain

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Motion complies with Fed. R. App. P. 27(d)(2)(A) and 32(f) and (g), as it complies with typeface requirements and contains 413 words, excluding exempted portions.

Date: April 28, 2023

/s/ Alexandra L. St. Romain  
ALEXANDRA L. ST. ROMAIN

*Counsel for Respondents*

### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion was filed with the Clerk of the Court using the CM/ECF system, which will send notification of said filing to the attorneys of record, who are required to have registered with the Court's CM/ECF system.

Date: April 28, 2023

/s/ Alexandra L. St. Romain  
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*Counsel for Respondents*